

## **Chapter 61 Psychologist Licensing Act**

### **Part 1 General Provisions**

#### **58-61-101 Title.**

This chapter is known as the "Psychologist Licensing Act."

Enacted by Chapter 32, 1994 General Session

#### **58-61-102 Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.
- (2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.
- (3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:
  - (a)
    - (i) transmitted between the client or patient and a psychologist in the course of that relationship;  
or
    - (ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and
  - (b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:
    - (i) present to further the interest of the client or patient in the consultation, examination, or interview;
    - (ii) reasonably necessary for the transmission of the communications; or
    - (iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist.
- (4) "Hypnosis" means, regarding individuals exempted from licensure under this chapter, a process by which one individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.
- (5) "Individual" means a natural person.
- (6) "Mental health therapist" means an individual licensed under this title as a:
  - (a) physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;
  - (b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;
  - (c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;
  - (d) psychologist qualified to engage in the practice of mental health therapy;
  - (e) a certified psychology resident qualifying to engage in the practice of mental health therapy;
  - (f) clinical social worker;
  - (g) certified social worker;
  - (h) marriage and family therapist;

- (i) an associate marriage and family therapist;
  - (j) a clinical mental health counselor; or
  - (k) an associate clinical mental health counselor.
- (7) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (6).
- (8) "Practice of mental health therapy" means the treatment or prevention of mental illness, whether in person or remotely, including:
- (a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder;
  - (b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (6);
  - (c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and
  - (d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (6).
- (9)
- (a) "Practice of psychology" includes:
    - (i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional psychological principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;
    - (ii) the observation, description, evaluation, interpretation, or modification of human behavior by the application of generally recognized professional principles, methods, or procedures requiring the education, training, and clinical experience of a psychologist, for the purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health;
    - (iii) psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;
    - (iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis, and behavior analysis and therapy;
    - (v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; and
    - (vi) psychoeducational evaluation, therapy, remediation, and consultation.
  - (b) An individual practicing psychology may provide services to individuals, couples, families, groups of individuals, members of the public, and individuals or groups within organizations or institutions.
- (10) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.
- (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-61-501.
- (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and may be further defined by division rule.

Amended by Chapter 16, 2013 General Session  
Amended by Chapter 123, 2013 General Session

## **Part 2 Board**

### **58-61-201 Board.**

- (1)
  - (a) There is created the Psychologist Licensing Board consisting of four licensed psychologists , one licensed behavior analyst, and one member from the general public.
  - (b) The licensed behavior analyst shall participate as a member of the board only for issues relevant to Part 7, Behavior Analyst Licensing Act.
- (2) The board shall be appointed, serve terms, and be compensated in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall:
  - (a) designate one of its members on a permanent or rotating basis to assist the division in review of complaints concerning unlawful or unprofessional practice by a licensee in the profession regulated by the board and to advise the division regarding the conduct of investigations of the complaints; and
  - (b) disqualify a member from acting as presiding officer in an administrative procedure in which that member has previously reviewed the complaint or advised the division.

Amended by Chapter 367, 2015 General Session

## **Part 3 Licensing**

### **58-61-301 Licensure required.**

- (1)
  - (a) A license is required to engage in the practice of psychology, except as specifically provided in Section 58-1-307.
  - (b) Notwithstanding the provisions of Subsection 58-1-307(1)(c) an individual shall be certified under this chapter as a psychology resident in order to engage in a residency program of supervised clinical training necessary to meet licensing requirements as a psychologist under this chapter.
- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
  - (a) psychologist; or
  - (b) certified psychology resident.

Amended by Chapter 281, 2001 General Session

### **58-61-302 Term of license.**

- (1)

- (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
- (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements as required under this chapter.
- (3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Enacted by Chapter 32, 1994 General Session

**58-61-304 Qualifications for licensure by examination or endorsement.**

- (1) An applicant for licensure as a psychologist based upon education, clinical training, and examination shall:
  - (a) submit an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character;
  - (d) produce certified transcripts of credit verifying satisfactory completion of a doctoral degree in psychology that includes specific core course work established by division rule under Section 58-1-203, from an institution of higher education whose doctoral program, at the time the applicant received the doctoral degree, met approval criteria established by division rule made in consultation with the board;
  - (e) have completed a minimum of 4,000 hours of psychology training as defined by division rule under Section 58-1-203 in not less than two years and under the supervision of a psychologist supervisor approved by the division in collaboration with the board;
  - (f) to be qualified to engage in mental health therapy, document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of a master's level of education in psychology, which training may be included as part of the 4,000 hours of training required in Subsection (1)(e), and for which documented evidence demonstrates not less than one hour of supervision for each 40 hours of supervised training was obtained under the direct supervision of a psychologist, as defined by rule;
  - (g) pass the examination requirement established by division rule under Section 58-1-203; and
  - (h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.
- (2) An applicant for licensure as a psychologist by endorsement based upon licensure in another jurisdiction shall:
  - (a) submit an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character and professional standing, and not have any disciplinary action pending or in effect against the applicant's psychologist license in any jurisdiction;
  - (d) have passed the Utah Psychologist Law and Ethics Examination established by division rule;
  - (e) provide satisfactory evidence the applicant is currently licensed in another state, district, or territory of the United States, or in any other jurisdiction approved by the division in collaboration with the board;
  - (f) provide satisfactory evidence the applicant has actively practiced psychology in that jurisdiction for not less than 2,000 hours or one year, whichever is greater;
  - (g) provide satisfactory evidence that:

- (i) the education, supervised experience, examination, and all other requirements for licensure in that jurisdiction at the time the applicant obtained licensure were substantially equivalent to the licensure requirements for a psychologist in Utah at the time the applicant obtained licensure in the other jurisdiction; or
  - (ii) the applicant is:
    - (A) a current holder of Board Certified Specialist status in good standing from the American Board of Professional Psychology;
    - (B) currently credentialed as a health service provider in psychology by the National Register of Health Service Providers in Psychology; or
    - (C) currently holds a Certificate of Professional Qualification (CPQ) granted by the Association of State and Provincial Psychology Boards; and
  - (h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.
- (3)
- (a) An applicant for certification as a psychology resident shall comply with the provisions of Subsections (1)(a), (b), (c), (d), and (h).
  - (b)
    - (i) An individual's certification as a psychology resident is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist.
    - (ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Amended by Chapter 16, 2013 General Session

Amended by Chapter 262, 2013 General Session

#### **58-61-305 Qualifications for admission to examination.**

All applicants for admission to any examination qualifying an individual for licensure under this chapter shall:

- (1) submit an application on a form provided by the division;
- (2) pay the fee established for the examination; and
- (3) certify under penalty of perjury as evidenced by notarized signature on the application for admission to the examination that the applicant:
  - (a) has completed the education requirement under this chapter and been awarded the earned degree required for licensure; and
  - (b) has successfully completed the supervised training required under this chapter for licensure.

Enacted by Chapter 32, 1994 General Session

#### **58-61-306 Continuing education.**

By rule made under Section 58-1-203, the division may establish a continuing education requirement as a condition for renewal of a license under this chapter upon finding continuing education is necessary to reasonably protect the public health, safety, or welfare.

Enacted by Chapter 32, 1994 General Session

**58-61-307 Exemptions from licensure.**

- (1) Except as modified in Section 58-61-301, the exemptions from licensure in Section 58-1-307 apply to this chapter.
- (2) In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included within the definition of practice as a psychologist, subject to the stated circumstances and limitations, without being licensed under this chapter:
  - (a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;
  - (b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b, Nurse Practice Act;
  - (c) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of psychologist;
  - (d) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;
  - (e) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:
    - (i)
      - (A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;
      - (B) consults with a client to determine current motivation and behavior patterns;
      - (C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;
      - (D) tests clients to determine degrees of suggestibility;
      - (E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and
      - (F) trains clients in self-hypnosis conditioning;
    - (ii) may not:
      - (A) engage in the practice of mental health therapy;
      - (B) represent himself using the title of a license classification in Subsection 58-60-102(5); or
      - (C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;
  - (f) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;
  - (g) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;
  - (h) any individual who was employed as a psychologist by a state, county, or municipal agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has maintained employment as a psychologist in the same state, county, or municipal agency

or other political subdivision while engaged in the performance of his official duties for that agency or political subdivision;

(i) an individual licensed as a school psychologist under Section 53A-6-104:

(i) may represent himself as and use the terms "school psychologist" or "licensed school psychologist"; and

(ii) is restricted in his practice to employment within settings authorized by the State Board of Education;

(j) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and

(k) an individual who is licensed, in good standing, to practice mental health therapy in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely to a client in Utah only if:

(i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy;

(ii) the client relocates to Utah;

(iii) the client is a client of the individual immediately before the client relocates to Utah;

(iv) the individual provides the short term transitional mental health therapy to the client only during the 45 day period beginning on the day on which the client relocates to Utah;

(v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy remotely to the client; and

(vi) the individual does not engage in unlawful conduct or unprofessional conduct.

Amended by Chapter 16, 2013 General Session

#### **58-61-308 Scope of practice -- Limitations.**

(1) A psychologist may engage in all acts and practices defined as the practice of psychology without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) An individual certified as a psychology resident may engage in all acts and practices defined as the practice of psychology only under conditions of employment as a psychology resident and under the supervision of a licensed psychologist who is an approved psychology training supervisor as defined by division rule. A certified psychology resident shall not engage in the independent practice of psychology.

Enacted by Chapter 281, 2001 General Session

## **Part 4**

### **License Denial and Discipline**

#### **58-61-401 Grounds for action regarding license -- Disciplinary proceedings.**

The division's grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

Enacted by Chapter 32, 1994 General Session

## **Part 5**

### **Unlawful and Unprofessional Conduct - Penalties**

#### **58-61-501 Unlawful conduct.**

As used in this chapter, "unlawful conduct" includes:

- (1) practice of psychology unless licensed as a psychologist or certified psychology resident under this chapter or exempted from licensure under this title;
- (2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); or
- (3) representing oneself as or using the title of psychologist, or certified psychology resident unless currently licensed under this chapter.

Amended by Chapter 281, 2001 General Session

#### **58-61-502 Unprofessional conduct.**

- (1) As used in this chapter, "unprofessional conduct" includes:
  - (a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;
  - (b) failure to confine practice conduct to those acts or practices:
    - (i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
    - (ii) which are within applicable scope of practice laws of this chapter; and
  - (c) disclosing or refusing to disclose any confidential communication under Section 58-61-602.
- (2) "Unprofessional conduct" under this chapter may be further defined by division rule.

Amended by Chapter 281, 2001 General Session

#### **58-61-503 Penalty for unlawful conduct.**

An individual who commits any act of unlawful conduct as defined in:

- (1) Subsection 58-61-501(1) or (2) is guilty of a third degree felony; or
- (2) Subsection 58-61-501(3) is guilty of a class A misdemeanor.

Enacted by Chapter 32, 1994 General Session

#### **58-61-504 Reporting of unprofessional or unlawful conduct -- Immunity from liability.**

- (1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-61-102 by a person licensed under this chapter or an individual not licensed under this chapter and engaged in acts or practices regulated under this chapter, that results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or that results in a significant adverse impact upon the public health, safety, or welfare, the following



shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct unless the individual or person knows it has been reported:

- (a) a licensed health care facility or organization in which an individual licensed under this chapter engages in practice;
  - (b) an individual licensed under this chapter; and
  - (c) a professional society or organization whose membership is comprised of individuals licensed under this chapter and which has the authority to discipline or expel a member for acts of unprofessional or unlawful conduct.
- (2) Any individual reporting acts of unprofessional or unlawful conduct by an individual licensed under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Enacted by Chapter 32, 1994 General Session

## **Part 6**

### **Evidentiary Privilege and Confidentiality**

#### **58-61-601 Evidentiary privilege.**

Evidentiary privilege for psychologists regarding admissibility of any confidential communication in administrative, civil, or criminal proceedings is in accordance with Rule 506 of the Utah Rules of Evidence.

Enacted by Chapter 32, 1994 General Session

#### **58-61-602 Confidentiality -- Exemptions.**

- (1) A psychologist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:
- (a) the client or patient;
  - (b) the parent or legal guardian of a minor client or patient; or
  - (c) the authorized agent of a client or patient.
- (2) A psychologist under this chapter is not subject to Subsection (1) if:
- (a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
    - (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
    - (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
    - (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
    - (iv) reporting of a communicable disease as required under Section 26-6-6;
  - (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or
  - (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Amended by Chapter 366, 2011 General Session

## **Part 7**

### **Behavior Analyst Licensing Act**

#### **58-61-701 Title.**

This part is known as the "Behavior Analyst Licensing Act."

Enacted by Chapter 367, 2015 General Session

#### **58-61-702 Definitions.**

In addition to the definitions in Section 58-61-102, as used in this part:

- (1) "Confidential communication" means information obtained by an individual licensed or registered under this part, including information obtained by the individual's observation of or interview with the client, patient, or authorized agent, which is:
  - (a)
    - (i) transmitted between the client, patient, or authorized agent and an individual licensed or registered under this part in the course of that relationship; or
    - (ii) transmitted among the client, patient, or authorized agent, an individual licensed or registered under this part, and individuals who are participating in the assessment or treatment in conjunction with an individual licensed or registered under this part, including the authorized agent or members of the client's or patient's family; and
  - (b) made in confidence, for the assessment or treatment of the client or patient by the individual who is licensed or registered under this part, and by a means not intended to be disclosed to a third party other than an individual:
    - (i) present to further the interest of the client or patient in the consultation, assessment or interview;
    - (ii) reasonably necessary for the transmission of the communications; or
    - (iii) participating in the assessment and treatment of the client or patient in conjunction with the behavior analyst or behavior specialist.
- (2) "Licensed assistant behavior analyst" means an individual licensed under this part to engage in the practice of behavior analysis under the supervision of a qualified supervisor, as defined by the division by administrative rule.
- (3) "Licensed behavior analyst" means an individual licensed under this part to engage in the practice of behavior analysis.
- (4)
  - (a) "Practice of behavior analysis" means the design and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes the following:
    - (i) the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis;
    - (ii) interventions based on scientific research and the direct observation and measurement of behavior and environment; and
    - (iii) utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
  - (b) "Practice of behavior analysis" does not include:
    - (i) diagnosis of a mental or physical disorder;

- (ii) psychological testing;
  - (iii) educational testing;
  - (iv) neuropsychology;
  - (v) neuropsychological testing;
  - (vi) mental health therapy;
  - (vii) psychotherapy;
  - (viii) counseling;
  - (ix) biofeedback;
  - (x) neurofeedback;
  - (xi) cognitive therapy;
  - (xii) sex therapy;
  - (xiii) psychoanalysis; or
  - (xiv) hypnotherapy.
- (5) "Registered assistant behavior specialist" means an individual who:
- (a) is employed:
    - (i) as a professional engaging in the practice of behavior analysis within an organization contracted under a division of the Utah Department of Human Services;
    - (ii) to provide behavior analysis; and
    - (iii) on or before May 15, 2015;
  - (b) limits the practice of behavior analysis to the contract described in Subsection (5)(a)(i); and
  - (c) is registered under this part with the division to engage in the practice of behavior analysis under the supervision of a qualified supervisor, as defined by the division by administrative rule.
- (6) "Registered behavior specialist" means an individual who:
- (a) is employed:
    - (i) as a professional engaging in the practice of behavior analysis within an organization contracted under a division of the Utah Department of Human Services to provide behavior analysis; and
    - (ii) on or before May 15, 2015;
  - (b) limits the practice of behavior analysis to the contract described in Subsection (6)(a)(i); and
  - (c) is registered under this part with the division to engage in the practice of behavior analysis.

Enacted by Chapter 367, 2015 General Session

**58-61-703 License or registration required.**

- (1) A license or registration is required to engage in the practice of behavior analysis, except as specifically provided in Section 58-1-307.
- (2) The division shall issue to a person who qualifies under this part a license in the classification of:
  - (a) behavior analyst; or
  - (b) assistant behavior analyst.
- (3) The division shall issue to a person who qualifies under this part a registration in the classification of:
  - (a) behavior specialist; or
  - (b) assistant behavior specialist.
- (4) An individual shall be licensed or registered under this part or exempted from licensure under this part in order to engage in, or represent that the individual is engaged in, the practice of behavior analysis.

Enacted by Chapter 367, 2015 General Session

**58-61-704 Term of license or registration.**

- (1)
  - (a) The division shall issue each license under this part with a two-year renewal cycle established by division rule.
  - (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, the licensed individual shall show satisfactory evidence of renewal requirements as required under this part.
- (3) Each license or registration expires on the expiration date shown on the license unless renewed by the licensed individual in accordance with Section 58-1-308.
- (4)
  - (a) A registration as a registered behavior specialist or a registered assistant behavior specialist:
    - (i) expires on the day the individual is no longer employed in accordance with Subsection 58-61-705(5)(e) or (6)(e); and
    - (ii) may not be renewed.
  - (b) The Department of Human Services, or an organization contracted with a division of the Department of Human Services, shall notify the Division of Occupational and Professional Licensing when a person registered under this part is no longer employed as a registered behavior specialist or a registered assistant behavior specialist.

Enacted by Chapter 367, 2015 General Session

**58-61-705 Qualifications for licensure -- By examination -- By certification.**

- (1) An applicant for licensure as a behavior analyst based upon education, supervised experience, and national examination shall:
  - (a) submit an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character;
  - (d) produce certified transcripts of credit verifying satisfactory completion of a master's or doctoral degree in applied behavior analysis from an accredited institution of higher education or an equivalent master or doctorate degree as determined by the division by administrative rule;
  - (e) as defined by the division by administrative rule, have completed at least 1,500 hours of experiential behavior analysis training within a five year period of time with a qualified supervisor; and
  - (f) pass the examination requirement established by division rule under Section 58-1-203.
- (2) An applicant for licensure as a behavior analyst based upon certification shall:
  - (a) without exception, on or before November 15, 2015, submit to the division an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character; and
  - (d) provide official verification of current certification as a board certified behavior analyst from the Behavior Analyst Certification Board.
- (3) An applicant for licensure as an assistant behavior analyst based upon education, supervised experience and national examination shall:
  - (a) submit an application on a form provided by the division;

- (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character;
  - (d) produce certified transcripts of credit verifying satisfactory completion of a bachelor's degree from an accredited institution of higher education and satisfactory completion of specific core course work in behavior analysis established under Section 58-1-203 from an accredited institution of higher education;
  - (e) as defined by the division by administrative rule, have completed at least 1,000 hours of experiential behavior analysis training within a five-year period of time with a qualified supervisor; and
  - (f) pass the examination requirement established by division rule under Section 58-1-203.
- (4) An applicant for licensure as an assistant behavior analyst based upon certification shall:
- (a) without exception, on or before November 15, 2015, submit to the division an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character; and
  - (d) provide official verification of current certification as a board certified assistant behavior analyst from the Behavior Analyst Certification Board.
- (5) An applicant for registration as a behavior specialist based upon professional experience in behavior analysis shall:
- (a) without exception, on or before November 15, 2015, submit to the division, an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character;
  - (d) have at least five years of experience as a professional engaged in the practice of behavior analysis on or before May 15, 2015; and
  - (e) be employed as a professional engaging in the practice of behavior analysis within an organization contracted with a division of the Utah Department of Human Services to provide behavior analysis on or before July 1, 2015.
- (6) An applicant for registration as an assistant behavior specialist based upon professional experience in behavior analysis shall:
- (a) without exception, on or before November 15, 2015, submit to the division, an application on a form provided by the division;
  - (b) pay a fee determined by the department under Section 63J-1-504;
  - (c) be of good moral character;
  - (d) have at least one year of experience as a professional engaging in the practice of behavior analysis prior to July 1, 2015; and
  - (e) be employed as a professional engaging in the practice of behavior analysis within an organization contracted with a division of the Utah Department of Human Services to provide behavior analysis on or before July 1, 2015.

Enacted by Chapter 367, 2015 General Session

**58-61-706 Continuing education.**

- (1) The division may establish administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring continuing education as a condition for renewal of any license classification or maintaining a registration classification under this part if the division finds that continuing education is necessary to reasonably protect the public health, safety, or welfare.

- (2) If a renewal cycle is extended or shortened under Section 58-61-704, the continuing education hours required for license renewal or maintaining a registration under this part shall be increased or decreased proportionally.

Enacted by Chapter 367, 2015 General Session

**58-61-707 Exemptions from licensure.**

In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included in the definition of the practice of behavior analysis, subject to the stated circumstances and limitations, without being licensed under this chapter:

- (1) a psychologist licensed under this chapter, and those acting under the psychologist's authority and direction;
- (2) a registered behavior specialist under this part;
- (3) a registered assistant behavior specialist under this part;
- (4) a mental health therapist licensed under Chapter 60, Mental Health Professional Practice Act;
- (5) a behavior analyst who practices with non-human or non-patient clients or consumers, including applied animal behaviorists;
- (6) an individual who provides general behavior analysis services to an organization, if the practice of behavior analysis is for the benefit of the organization and does not involve the practice of behavior analysis on an individual;
- (7) an individual who teaches behavior analysis or conducts behavior analysis research, provided that the individual does not practice behavior analysis on an individual as part of the teaching or research;
- (8) an employee of a school district, private school, or charter school who:
  - (a) practices behavior analysis as part of the employee's job description with the school district, private school, or charter school; and
  - (b) limits the employee's practice to the employment settings authorized by the:
    - (i) State Board of Education, if the employee is employed by a public school or charter school; or
    - (ii) private school employer, if the employee is employed by a private school;
- (9) a matriculated graduate student in:
  - (a) a mental health field whose activities are part of a defined program of study or professional training; or
  - (b) education or applied behavior analysis whose activities are part of a defined program of study or professional training;
- (10) a person:
  - (a) who is enrolled in a behavior analysis course sequence approved by the Behavior Analyst Certification Board at an accredited institution of higher education;
  - (b) whose activities are part of a defined program of study or professional training; and
  - (c) who is actively accruing supervision hours as defined by division rule under Section 58-1-203 and under the supervision of a licensed behavior analyst;
- (11) a person who:
  - (a) has completed and passed a course sequence approved by the Behavior Analyst Certification Board; and
  - (b) is completing the supervision hours as defined by division rule under Section 58-1-203 and under the supervision of a licensed behavior analyst or other supervisor as permitted by rule adopted by the division;

- (12) a person who:
  - (a) has completed and passed the course sequence approved by the Behavior Analyst Certification Board;
  - (b) has completed the supervision hours as defined by division rule under Section 58-1-203;
  - (c) continues working under the supervision of a behavior analyst; and
  - (d) is preparing to take the licensing examination or awaiting results of the licensing examination, provided the exemption under this Subsection (12)(d) does not extend beyond six months from the latter of Subsection (12)(b) or (c);
- (13) until November 15, 2015, a person who:
  - (a) has completed and passed the Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst Examination developed by the Behavior Analyst Certification Board; and
  - (b) is in the process of applying for a license under this part;
- (14) an individual providing advice or counsel to another individual in a setting of the individual's association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; or
- (15) an individual exempt under Subsection 58-1-307(1)(b) only if the individual is supervised by qualified faculty or staff and the activities are a defined part of the degree program.

Enacted by Chapter 367, 2015 General Session

#### **58-61-708 License and registration denial and discipline.**

The division's grounds for refusing to issue a license or registration to an applicant, for refusing to renew the license of a licensed individual or registration of a registered individual, for revoking, suspending, restricting, or placing on probation the license of a licensed individual or registration of a registered individual, for issuing a public or private reprimand to a licensed individual or registered individual, and for issuance of a cease and desist order are under Section 58-1-401.

Enacted by Chapter 367, 2015 General Session

#### **58-61-709 Unlawful conduct.**

As used in this part, "unlawful conduct" includes:

- (1) practice of behavior analysis unless licensed as a behavior analyst or assistant behavior analyst under this part, registered as a behavior specialist or assistant behavior specialist, or exempted from licensure or registration under this title; or
- (2) representing oneself as or using the title of licensed behavior analyst or licensed assistant behavior analyst unless currently licensed under this part.

Enacted by Chapter 367, 2015 General Session

#### **58-61-710 Unprofessional conduct.**

As used in this part, "unprofessional conduct" includes:

- (1) using or employing the services of any individual to assist a licensed behavior analyst, licensed assistant behavior analyst, registered behavior specialist, or registered assistant behavior specialist in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed or the laws of the state, including:
  - (a) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring compliance with the requirements of administrative rule adopted by the division;

- (b) engaging in and aiding or abetting conduct or practices that are false, dishonest, deceptive, or fraudulent;
  - (c) engaging in or aiding or abetting deceptive or fraudulent billing practices;
  - (d) failing to establish and maintain appropriate professional boundaries with a client or former client;
  - (e) engaging in or promising a personal, scientific, professional, financial, or other relationship with a client if it appears likely that such a relationship reasonably might impair the behavior analyst's or registered behavior specialist's objectivity or might harm or exploit the client;
  - (f) engaging in sexual activities or sexual contact with a client with or without client consent;
  - (g) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;
  - (h) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition that could reasonably be expected to place the client at a disadvantage, recognizing the power imbalance that exists or may exist between the behavior analyst or registered behavior specialist and the client;
  - (i) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;
  - (j) exploiting a client for personal gain;
  - (k) using a professional client relationship to exploit a client or other person for personal gain;
  - (l) failing to maintain appropriate client records for a period of not less than seven years from the documented termination of services to the client;
  - (m) failing to obtain informed consent from the client or legal guardian before taping, recording, or permitting third party observations of client care or records;
  - (n) failing to cooperate with the division during an investigation;
  - (o) using the abbreviated title of LBA unless licensed in the state as a behavior analyst;
  - (p) using the abbreviated title of LaBA unless licensed in the state as an assistant behavior analyst;
  - (q) failing to make reasonable efforts to notify a client and seek the transfer or referral of services, according to the client's needs or preferences, when a behavior analyst anticipates the interruption or termination of services to a client;
  - (r) failing to provide for orderly and appropriate resolution of responsibility for client care in the event that the employment or contractual relationship ends, according to the client's needs and preferences;
  - (s) failing to make reasonable steps to avoid abandoning a client who is still in need of services;
  - (t) failing to report conviction of a felony or misdemeanor directly relating to the practice of behavior analysis or public health and safety;
  - (u) failing to report revocation or suspension of certification from the Behavior Analyst Certification Board; and
  - (v) failure to confine practice conduct to those acts or practices in which the individual is competent by education, training, and experience within limits of education, training, and experience; and
- (2) other conduct as further defined by administrative rule adopted by the division.

Enacted by Chapter 367, 2015 General Session

**58-61-711 Penalty for unlawful conduct.**



An individual who commits any act of unlawful conduct as defined in:

- (1) Subsection 58-61-501(1) is guilty of a third degree felony; or
- (2) Subsection 58-61-501(2) is guilty of a class A misdemeanor.

Enacted by Chapter 367, 2015 General Session

**58-61-712 Reporting of unprofessional or unlawful conduct -- Immunity from liability.**

- (1) Upon learning of an act of unlawful or unprofessional conduct as defined in Section 58-61-102 by a person licensed or registered under this chapter or an individual not licensed or registered under this chapter who engaged in acts or practices regulated under this chapter, which results in disciplinary action by a licensed health care facility, professional practice group, or professional society, or which results in a significant adverse impact upon the public health, safety, or welfare, the following shall report the conduct in writing to the division within 10 days after learning of the disciplinary action or the conduct, unless the individual or person knows it has been reported:
  - (a) a licensed health care facility or an organization in which an individual licensed or registered under this chapter engaged in practice;
  - (b) an individual licensed or registered under this chapter; or
  - (c) a professional society or organization whose membership individuals licensed or registered under this chapter and that has the authority to discipline or expel a member for acts of unprofessional conduct or unlawful conduct.
- (2) Any individual who reports acts of unprofessional or unlawful conduct by an individual licensed or registered under this chapter is immune from liability arising out of the disclosure to the extent the individual furnishes the information in good faith and without malice.

Enacted by Chapter 367, 2015 General Session

**58-61-713 Confidentiality -- Exemptions.**

- (1) A behavior analyst or behavior specialist under this chapter may not disclose any confidential communication with a client or patient without the express consent of:
  - (a) the client or patient;
  - (b) the parent or legal guardian of a minor client or patient; or
  - (c) the authorized agent of a client or patient.
- (2) A behavior analyst or behavior specialist is not subject to Subsection (1) if:
  - (a) the behavior analyst or behavior specialist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:
    - (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;
    - (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;
    - (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or
    - (iv) reporting of a communicable disease as required under Section 26-6-6;
  - (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Utah Rules of Evidence, Rule 506; or
  - (c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Enacted by Chapter 367, 2015 General Session

**58-61-714 Third party payment for licensed behavior analyst.**

Notwithstanding the provisions of Section 31A-22-618, payment from third party payers for behavior analysis may be limited to:

- (1) a licensed behavior analyst as defined in 58-61-701; and
- (2) the following, working within the scope of their practice:
  - (a) a physician licensed under Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act;
  - (b) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;
  - (c) a psychologist licensed under this chapter;
  - (d) a clinical social worker licensed under Chapter 60, Part 2, Social Worker Licensing Act;
  - (e) a marriage and family therapist licensed under Chapter 60, Part 3, Marriage and Family Therapist Licensing Act; and
  - (f) a clinical mental health counselor licensed under Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act.

Enacted by Chapter 367, 2015 General Session